

§ 4.261 Anti-lapse provisions.

(a) This section applies when:

(1) An Indian testator devises or bequeaths trust property to any of his or her grandparents or to the lineal descendant of a grandparent; and

(2) The beneficiary dies before the testator leaving lineal descendants.

(b) The lineal descendants referred to in paragraph (a)(2) of this section take the right, title, or interest so given by the will per stirpes.

(c) Relationship by adoption is equivalent to relationship by blood.

§ 4.262 Felonious taking of testator's life.

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, may take directly or indirectly any devise or bequest under deceased's will. All right, title, and interest existing in such a situation will vest and be determined as if the person convicted never existed, notwithstanding § 4.261.

CUSTODY AND DISTRIBUTION OF ESTATES

SOURCE: 70 FR 11822, Mar. 9, 2005, unless otherwise noted.

§ 4.270 Custody and control of trust estates.

(a) The Superintendent may:

(1) Assume custody or control of all tangible trust personal property of a deceased Indian; and

(2) Take such action, including sale of the property, as in his or her judgment is necessary for the benefit of the estate, the heirs, and the beneficiaries, pending entry of the decision provided for in §§ 4.214, 4.240, 4.241, or 4.312.

(b) All expenses, including expenses of roundup, branding, care, and feeding of livestock, are chargeable against the estate and may be paid from:

(1) Those funds of the deceased that are under the Department's control; or

(2) The proceeds of a sale of the property or a part thereof.

(c) If a deciding official has been assigned to adjudicate the estate, his or her approval is required before payment can be made under paragraph (b)(2) of this section.

§ 4.271 Omitted property.

(a) This section applies when, after issuance of a decision under §§ 4.214, 4.240, or 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory.

(1) The inventory can be modified to include the omitted property for distribution under the original decision.

(2) Modification may be made either administratively by BIA or by a modification order prepared by him or her for the approval and signature of a deciding official.

(3) Copies of all modifications must be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, BIA must notify the deciding official, who will proceed to hold an informal or formal hearing if necessary and issue a decision under §§ 4.214 or 4.240. The record of any such proceeding must be lodged with the designated LTRO under § 4.236(b).

§ 4.272 Improperly included property.

(a) When, after a decision under §§ 4.214, 4.240, or 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the agency where the property is located, or by any interested party.

(b) An administrative law judge or Indian probate judge will review the record of the title upon which the modification is to be based and enter an appropriate decision. If the decision is entered without a formal hearing, the administrative law judge or Indian probate judge must give notice of his or her action to all parties whose rights are adversely affected, allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate, the administrative law judge or Indian probate judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled

§ 4.273

and conducted in accordance with the rules of this subpart. The administrative law judge or Indian probate judge will enter a final decision based on his or her findings, modifying or refusing to modify the property inventory. His or her decision will become final at the end of 60 days from the date it is mailed, unless an aggrieved party files a notice of appeal within such period. Notice of entry of the decision must be given in accordance with § 4.240(b).

(d) A party aggrieved by the deciding official's decision may appeal to the Board under §§ 4.310 through 4.323.

(e) The record of all proceedings must be lodged with the designated LTRO under § 4.236(b).

§ 4.273 Distribution of estates.

(a) The Superintendent must initiate payment of allowed claims, distribution of the estate, and all other actions required by the deciding official's final order 75 days after a final order has been issued, unless he or she has received:

(1) A copy of a request for de novo review filed under § 4.215;

(2) A copy of a petition for rehearing filed under § 4.241(a); or

(3) A copy of a notice of appeal filed under § 4.320(b).

(b) The Superintendent must not initiate the payment of claims or distribution of the estate during the pendency of proceedings under §§ 4.215, 4.241, or 4.242, unless the administrative law judge or Indian probate judge orders otherwise in writing. The Board may, at any time, authorize the administrative law judge or Indian probate judge to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

MISCELLANEOUS

SOURCE: 70 FR 11823, Mar. 9, 2005, unless otherwise noted.

§ 4.281 Claims for attorney fees.

(a) The deciding official may allow fees for attorneys representing Indians in proceedings under this part.

(1) At the discretion of the deciding official, these fees may be chargeable against the interests of the party rep-

43 CFR Subtitle A (10-1-06 Edition)

resented or may be taxed as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing and must be supported by whatever proof the deciding official requires.

(3) In determining attorney fees, consideration must be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all interested parties.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

§ 4.282 Guardians for incompetents.

Minors and other legal incompetents who are interested parties must be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the deciding official.

TRIBAL PURCHASE OF INTERESTS UNDER SPECIAL STATUTES

SOURCE: 70 FR 11823, Mar. 9, 2005, unless otherwise noted.

§ 4.300 Authority and scope.

(a) Sections 4.300 through 4.308 apply to formal proceedings in Indian probate that relate to the tribal purchase of a decedent's interests in the trust and restricted land shown in the following table.

Location of trust or restricted land	Legislation governing purchase
(1) Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951).	The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968).
(2) Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37).	The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530).
(3) Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).	The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744).